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CURRENT TOPICS

Colonel Sir Geoffrey Hippisley-Cox

COLONEL Sir EDWARD GEOFFREY HIPPISLEY-COX, C.B.E., T.D., D.L., who died on 24th February at the age of 69, was a distinguished solicitor as well as a soldier, being a partner in Messrs. Dyson, Bell and Co., parliamentary agents. He was also a member of the Statute Law Committee for many years. He was a Staff Captain in the Territorial Army in 1915, Deputy Assistant Quartermaster-General in 1916, Deputy Assistant Adjutant-General in 1917, and Assistant Adjutant-General in 1918, when he was brevet Major mentioned in despatches, and in 1919 was awarded the C.B.E. In 1925 he was granted the brevet of colonel, and in 1938 he was knighted. During the 1939–45 war he served as A.A.G. at London District Headquarters. A memorial service is to be held at noon on 11th March at St. Margaret's Church, Westminster.

Pensions for the Self Employed

THE recent report of the Millard Tucker Committee on the taxation remissions which can be made for lawyers and other self-employed professional men against their old age and possible retirement and for their families upon death lends interest to the way in which similar problems are met in other countries. In the U.S.A., according to the *Massachusetts Law Quarterly* for December, 1953, four Bills now pending in Congress provide a similar approach to this problem. The Bills are sponsored by a special committee of the American Bar Association on retirement benefits and by corresponding committees of other professional organisations, and they provide that any " qualified individual " may deduct from his gross income for Federal income tax purposes in any year, subject to certain limitations, that portion of his earned income which he has contributed to a " restricted retirement fund to be managed by a trustee " or paid to a life insurance company as premium under a " restricted retirement annuity contract." A " qualified individual " is defined and covers not only self-employed lawyers and partners in law firms, but also employees of partnerships or corporations which have no qualified pension or profit-sharing plan. The amount deductible in each year cannot exceed 10 per cent. of his earned income, or $7,500, whichever is less, and there is a lifetime limitation of $150,000. The income on the amount so paid to a trustee or insurance company is exempt from income tax under provisions similar to those exempting income accumulated in corporate pension or profit-sharing funds. Upon reaching sixty-five years of age the taxpayer has the option of withdrawing the accumulated fund in annual instalments or in a lump sum. If he elects to receive the sum on an instalment basis, he pays at ordinary income tax rates on the amount received. If he elects to take his entire interest in the fund in a lump sum payment, after accumulation for more than five years, he may treat the distribution as a long-term capital gain—again under conditions similar to those applicable to corporate pension and profit-sharing plans. The benefits of the Bills are largely concentrated in three points: (1) deferment of Federal tax from the period of high earnings at high

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rates to a later period of lower earnings at lower rates; (2) the exemption from all income tax of the income on the funds being accumulated; and (3) the opportunity for systematic savings in supervised funds which by their size permit a degree of diversification of investments beyond the means of ordinary individuals. It is noteworthy that the objection was in fact made by legislators that the Federal Government might not be able to afford the revenue loss involved. The *Massachusetts Law Quarterly* answers this with a quotation from the *Harvard Law Review* of April, 1953: "It seems more equitable to distribute the tax burden among all taxpayers than to continue the discrimination against one group."

"Domicile" in Federal States

A PROBLEM of domicile not referred to in the recent report of Mr. Justice WYNN PARRY'S Committee was dealt with by Mr. WILLIAM LATEY, Q.C., in a letter to *The Times* of 22nd February, 1954. He referred to "the somewhat artificial distinction upheld by our courts between one division of a federal State and another as to domicile." "As the law stands," he wrote, "a person in English law cannot be domiciled in the Dominion of Canada, the Commonwealth of Australia or the Union of South Africa, or the United States of America. Yet each of them is a sovereign State. It has been held that the domicile must be in one of the component States or provinces of such States" (*Travers* v. *Holley* [1953] P. 246, 253; *Gatty and Gatty* v. *A.-G.* [1951] P. 444). "Doubtless," he continued, "there was a good reason for this distinction in federal States whose component parts possessed totally different systems of law one from the other, but there never was such a difference as between the Australian States nor the Canadian provinces (except Quebec)." He added in conclusion that, though Russia and Switzerland are constitutionally federal sovereign powers, it had never occurred, so far as he knew, to our courts to require proof of domicile in any one of the Soviet Republics or of the Swiss cantons.

Town and Country Planning (Grants) Amendment Regulations, 1954

ON 24th February, 1954, regulations came into force (S.I. 1954 No. 177) which provide for grant to be paid towards expenditure incurred by local authorities in acquiring land under purchase notice procedure in areas which are to be comprehensively redeveloped. Hitherto this expenditure has only come into course for grant as the land has been taken in hand with surrounding areas for redevelopment, and this has meant that, where such redevelopment is not to be undertaken for some time, the local authorities have been left to bear the expenditure for the time being without assistance. The burden has now become heavy in some cases, and this new grant provision has been decided upon as a part of the settlement with the local authorities in connection with the revision of the financial provisions of the Act of 1947 and to afford them some immediate relief. The rate of grant is 50 per cent. The regulations also prescribe a basis for the calculation of grants under the principal regulations in areas for which joint boards have been set up. It was not expected when the main regulations were made that there would be any such boards, but the position has changed as a result of the National Parks and Access to the Countryside Act, 1949. The effect of these regulations is limited to a relatively small number of local authorities, and these have received direct notification.

THE TOWN AND COUNTRY PLANNING BILL

THE long-awaited Town and Country Planning Bill has now been introduced into the House of Commons. The Bill, designed to complete the revision of the financial provisions of the Town and Country Planning Act, 1947, initiated by the similarly named Act of 1953, consists of seventy-three complicated clauses and ten Schedules. Even so it leaves much detail to be filled in by regulations to be made by the Minister.

This article is intended to explain in very general terms only the principal features of the Bill.

First, it makes provision for payments in certain special cases. These are described in the Bill as Cases A, B, C and D and certain analogous cases.

Case A is that of the holder of an agreed claim on the old £300m. fund who, or whose predecessor in title, has paid a development charge. He will be repaid his development charge (cl. 4).

Case B is that of the holder of an agreed claim who sold his land to a public authority or to a private individual at a price wholly or partly excluding development value. It will be remembered that it was the policy of the Central Land Board to encourage sales at existing use value and excluding development value. In this type of case the holder will receive the amount of his claim less any amount by which the sale price for the land may have exceeded the existing use value (cl. 6).

Case C is a rarer kind. It is that of the holder of an agreed claim who has disposed of his land by way of gift otherwise than by will or *donatio mortis causa*. He will receive the amount of his claim (cl. 8).

Case D is that of a person who has bought a claim, but has never had any interest in the land. He will receive the agreed amount of the claim or the price he paid for it, whichever is the less (cl. 9).

Clause 11 provides for "Payment in cases analogous to Case B." These are cases where the holder of the agreed claim did not sell his land in the ordinary way at a price excluding development value, but has disposed of it or suffered damage to it, and has received terms which do not take account, wholly or partly, of development value. There are four cases listed, of which the two most common are those of the grant of a tenancy or a sale in consideration of a rentcharge, the rent or rentcharge excluding wholly or partly any element of development value. The amount the holder will receive is left to the discretion of the Central Land Board.

Clause 12 provides for "Residual payments in cases analogous to Cases A and B." This heading covers the cases of persons who bought their land at a price in excess of existing use value and whose vendors retained the benefit of the agreed claims. If such a person has subsequently paid a development charge or has had the land purchased from him at existing use value by a public authority possessing compulsory powers, he will, after satisfying the Central Land Board on certain points, be paid such amount as the Board may determine having regard to the provisions relating to payments under Cases A and B. Presumably it is the intention that such a person should receive the amount of the development value he paid to his vendor in the purchase price up to the amount of the agreed claim or the development charge paid by him, whichever is the less.

All these cases relate to matters which have happened before the commencement of the new Act to be. Any person entitled to one of these payments will have to apply for it to the Central Land Board, who are responsible for paying the principal amounts involved with interest at the rate of 3½ per cent. per annum from the 1st July, 1948, up to the date of payment or the 30th June, 1955, whichever is the earlier.

There is one other case where payment may be said to have accrued due, namely, where planning permission has been refused for the development of land or has been granted subject to conditions. However, the Bill does not deal with this type of case in Pt. I, but leaves it over to Pt. V.

Part II of the Bill is devoted to cases where planning permission is refused or granted subject to conditions after the commencement of the new Act.

Clause 20 provides that a person shall be entitled to compensation if the value of his interest in land is depreciated by a planning decision. This may sound very satisfactory, but cll. 23 and 24 constitute the other hand which largely takes away what cl. 20 gives. No one should think that he need no longer worry about obtaining planning permission before he buys land for development because he will be compensated if he does not get the permission he wants. Clauses 23 and 24 are particularly important because they may influence the prices to be paid for property before they become law.

Clause 23 lists the cases in which compensation is excluded. No compensation will be payable in the following cases:—

(1) for the refusal of permission to make a material change in the use of any property;

(2) for the refusal of permission to make an access to a highway otherwise than by a service road;

(3) for the refusal of permission to develop land where one of the reasons is that the land is unsuitable on account of its liability to flooding or subsidence;

(4) for the imposition of conditions relating to—

(*a*) the density and disposition of buildings,

(*b*) the design and external appearance of buildings,

(*c*) the layout of land, including parking and loading facilities for vehicles,

(*d*) the use of buildings or land,

(*e*) the location or design of a means of access to a highway otherwise than by a service road,

(*f*) the winning or working of minerals;

(5) for the refusal of permission where one of the reasons for the refusal is that the development would be premature having regard to the programming of the development plan or a deficiency in water supplies or sewerage services; but this exclusion ceases to have effect at the end of ten years from the first refusal.

Clause 24 is in some ways even more unfavourable. It excludes compensation for the refusal of development if some other comparable development is permitted. The Sixth Schedule lists eight classes of buildings as comparable for this purpose, namely:—

(1) Houses (including flats).
(2) Shops and restaurants.
(3) Office buildings.
(4) Garages and petrol filling stations.
(5) Industrial buildings and warehouses.
(6) Cinemas (including television cinemas).
(7) Buildings designed for use (wholly or mainly) for the sale of intoxicating liquor.
(8) Composite buildings falling within two or more of the preceding items.

This would seem to mean that, for example, someone who bought an expensive piece of industrial land in the hope of erecting a factory on it would be unable to recover compensation if he found he could only obtain permission to put a house on it.

Even if these hurdles have been surmounted there has to be attached to the land before compensation can be obtained "an unexpended balance of established development value." This means in effect an agreed claim on the old £300m. fund or such part of a claim as has not already been paid out in compensation.

The compensation payable will be the amount of the depreciation in the value of the land caused by the planning decision up to the amount of the unexpended balance plus one-seventh of the amount of the balance (cl. 21).

The responsibility for paying the compensation is placed on the Minister and he is given the opportunity of escaping payment by reversing or varying the decision of the planning authority which gives rise to the claim (cll. 31 and 29, respectively).

Payments of compensation exceeding £20 in amount will be registered in the local land charges register for the appropriate county district (cl. 32). If anyone subsequently obtains planning permission to erect buildings of any of the classes specified in the Sixth Schedule on the land or to win and work minerals he will have to repay the registered amount to the Minister before he starts his development (cl. 33).

This is a convenient place to refer to Pt. V of the Bill relating to compensation for planning decisions before the commencement of the Act to be. It applies to these cases substantially the same provisions as those relating to post-Act decisions. However, the exclusions from compensation mentioned as items (3) and (5) above under cl. 23 do not apply. In these cases also the upper limit of compensation is not the unexpended balance of the agreed claim plus one-seventh, but the amount of the agreed claim, and interest is payable on the compensation at the rate of 3½ per cent. per annum from 1st July, 1948, to the date of payment or 30th June, 1955, whichever is the earlier.

Part III of the Bill treats of compensation for the compulsory acquisition of land.

As readers will be aware, the basic principle of the 1947 Act was that, except in special cases such as ripe land within s. 80, this compensation was to be calculated on the existing use value of land. Section 51 (4) of the 1947 Act established this principle by providing that, except in the special cases, any planning permission granted under the 1947 Act should be disregarded in calculating the compensation. The development value attributable to the planning permission was thereby eliminated from the compensation.

This basic principle is retained but, in addition to the existing use value, there is to be paid as part of the compensation (cl. 35) the unexpended balance of any agreed claim on the £300m. fund plus one-seventh of such balance. Clause 36 provides for the payment of additional compensation for expenditure on works on the land.

Clause 37 introduces a somewhat novel provision. This enables a prospective purchaser to require the county district council concerned to inform him whether they or any other authority propose to acquire compulsorily the land he is buying. If the answer is in the negative, the enquirer's purchase is completed within three months, and a compulsory purchase order is in fact made within three years, then s. 51 (4) is not to apply with the result that, even if there is no agreed claim on the £300m. fund, the compensation

payable will include the development value of the land for any development for which planning permission may have been granted.

Clause 38 preserves the benefits enjoyed by ripe land and the other special cases, e.g., local authorities' land and charity land, in Pt. VIII of the 1947 Act. In these cases no claims would have been made on the £300m. fund and development value will be included in the compensation payable as heretofore.

Part IV of the new Bill relates to compensation for the revocation or modification of planning permissions, and Pt. VI contains miscellaneous and supplementary provisions. Of these, special mention may be made of cl. 60, which provides for the recovery, on subsequent development, of payments made under s. 59 of the 1947 Act, and cl. 62, which prohibits the assignment after the commencement of the new Act of the Pt. VI claims to loss of development value originally made on the £300m. fund, except where, before such commencement, the approval of the Central Land Board is applied for under s. 2 (2) of the 1953 Act and is subsequently granted.

R. N. D. H.

THE MILLARD TUCKER REPORT—II

SELF-EMPLOYED, DIRECTORS AND "NON-PROVIDED-FOR" EMPLOYEES—(*contd.*)

4. *Payments of Contribution and Qualifying Earnings*

In the case of any one of the four classes now under consideration other than the self-employed the earnings to which the appropriate percentage is to be applied will be the remuneration assessable under Sched. E in respect of the year of assessment in which relief is to be claimed. In the case of the self-employed the earnings will be the profits as assessable under Sched. D, Case I or II, subject to certain modifications.

So far as possible contributions are to be paid in the year of assessment in which relief is to be claimed: this may present some difficulties in the case of the self-employed, but these are matters of administration rather than principle (see paras. 420–428).

5. *Death before Retirement Age*

It will be recalled that the Type A benefit but not the Type B benefit provides for a sum to be payable on death before retirement age, and it is recommended (para. 444) that when this occurs the sum should be dealt with as follows:—

"(*a*) It should be converted into a non-assignable and non-commutable annuity for the widow or dependent children, or partly one and partly the other, except that one-quarter of that lump sum may be retained tax free subject to the above upper and lower limits of £10,000 and £1,000 respectively.

(*b*) If there is no such widow or dependent child such lump sum shall be taxable at the standard rate; but it shall not be liable to sur-tax, or be regarded as taxable income either of the estate or of any beneficiary for any other taxation purpose . . ."

It will be appreciated that this is merely another example of ensuring that if the "build-up" is tax free the benefits shall, in general, be taxable.

The Type B benefit provides no protection for dependants in the event of premature death and the protection afforded by the Type A benefit, discussed above, may be far from adequate if the death occurs at an early age. A number of suggestions designed to overcome this imperfection were considered and the Committee, in the end, recommended that use be made of an extension of the existing life assurance relief. It is always open to any person to take out a policy on his own life to afford protection against his death before the chosen retirement age or, alternatively, before the age at which the Type A benefits will have become reasonably substantial and such temporary life assurance would, of course, be considerably cheaper than a whole life assurance. Furthermore the premiums on such a policy would, *prima facie*, rank for ordinary life assurance relief. But it will be recalled that that relief is restricted in that the aggregate amount of premiums entitled to relief in any year is not to exceed one-sixth of the claimant's income for that year.

In many cases the premiums payable in respect of the temporary life assurance which is envisaged will not, even when aggregated with the claimant's other life policies, amount to so much as one-sixth of his income, but in order to meet the exceptional case where it does it is recommended (para. 414) that:—

". . . any individual falling within one of the four classes now being dealt with who takes out a policy for temporary life cover (provided it is not for death after the chosen retirement age) shall be entitled to life assurance relief on so much of the annual premium payable as is equivalent to one-fourth of the permissible percentage of his qualifying earnings for the period in question; and that this relief be given notwithstanding that it might cause the total amount on which life assurance relief can be claimed for that year to exceed one-sixth of his total income for that year."

Thus it would be possible for a man, in addition to purchasing Type A benefits, to insure against his death before the mounting total of those benefits became sufficient to protect his dependants, and to obtain relief on the premiums in respect thereof to the extent mentioned. The lump sum which would be payable on his death under such a policy would be tax free and could be used to purchase an annuity for his widow or dependants which annuity would, if the recommendations relating to purchased annuities (below) are accepted, be only partially liable to tax.

Such a policy could equally, of course, be taken out in conjunction with Type B benefits, but it is thought that those whose circumstances are such as to require such cover would not be likely to purchase Type B benefits.

6. *The Machinery of a Scheme*

So far reference has been made to a person of one of the four classes under discussion contributing to a "scheme," but no mention has been made of the organisation of such a scheme. In fact it is not necessary that there should be any organisation, as each individual may make his own arrangements with an assurance office of his choice and the matter will take on no more complex an appearance than the regular purchase of Type A or Type B benefits, although no doubt the successive purchases will be indorsed upon one policy rather than there being a new document each year. It has already been stressed that if the "build-up" is to be tax free the benefits must be taxable, and to ensure this it will be necessary that the arrangements between the taxpayer and his insurance company shall be approved by the Board of Inland Revenue to ensure that they are of the type envisaged. In practice the life offices will in the vast majority of cases

offer a policy in a standardised form which will command automatic approval.

It is also envisaged that in some cases professional or other organisations may promote group schemes for the benefit of their members but this, of course, does not affect the operation of the reliefs. In either case it is to be noticed that in order that the " build-up " shall be really tax free the interest earned by the various contributions during that period is itself to be tax free in the hands of the assurer or the fund if one is established.

Employees' Superannuation Schemes

It is not proposed to say a very great deal about the recommendations of the Committee in this respect because it is thought that, at this stage at any rate, this is a matter which is of interest principally to those comparatively few who take a close interest in such schemes or in taxation law in general. Chapter 3 of the report is, indeed, a veritable text-book of the history, law and practice of the matter and the most cursory inspection of that chapter will show what an extremely involved and complicated matter it is. Adhering to the basic principle of allowing a tax-free " build-up " on condition that the benefits are taxable, the Committee have recommended that in the future the law and practice governing all such schemes shall be standardised to a far greater extent than is the case at present.

So far as relief is concerned the employee is interested in two ways: firstly he is interested that his contributions to the scheme may, so far as possible, be allowed against his taxation either as an expense wholly and necessarily incurred, so that he can deduct the amount of those contributions from his emoluments for taxation purposes or, less advantageously, as equivalent to life assurance premiums so that life assurance relief may be had thereon: secondly he is interested that the employer's contributions to the scheme be not regarded as additional remuneration so that he, the employee, may be taxed upon it. The employer is chiefly interested that his contributions should be allowed as proper deductions in computing his taxable profits under Sched. D, Case I or II. So far as benefit is concerned the employee is of course not averse to receiving part of his retirement provision in a form which is tax free in his hands. The Crown is interested in all these matters, from the other side of the fence as it were, but is also interested to see that any particular scheme is in truth a *bona fide* superannuation fund, not merely a disguised savings scheme so that an employee may allow some part of his remuneration to accumulate without being taxed in order that in due course it may be withdrawn again without being taxed. Furthermore, since the reliefs given are, after all, reliefs, the Crown is interested to see that neither the contributions nor the benefits are in any particular case unreasonable.

The Committee recommends that the " build-up " of a fund should be tax free providing, *inter alia*, that—

> The particular scheme in question meets with the approval of the Commissioners. It is expected that the Commissioners will indicate, as is the case now in many instances, the type of scheme which will secure automatic approval.
>
> Contributions both of employer and employee must be effectively alienated from their respective control and it must be rendered impossible, under the rules of the scheme, for benefits to be withdrawn before retirement age—except indeed in proper cases of permanent disability.
>
> The scheme must be a general one applicable to all employees or all employees of a specified class and must be made known to the employees—it must not, that is to say, be a semi-secret arrangement for the benefit of the favoured few.
>
> The benefits must not be excessive. A pension of one-sixtieth of the average salary of the last three years of employment in respect of each year of service is not to be considered excessive.
>
> The benefits must not be commutable or assignable except that lump sum payments may be made within approximately the same limits as are mentioned under head 2 of the section on Self-Employed Persons, etc., which appeared in last week's issue.

If all these major, and some other less striking, requirements are met then payments by employers may be deducted as a business expense and the employee's contributions will be allowed as a deduction in computing his taxable income up to a maximum of 15 per cent. of his emoluments for the year in question.

Taxation of Contractual Annuities

It has long been a somewhat controversial feature of our taxation law that, in the case at any rate of a whole life annuity, periodic annuity payments are regarded as taxable income in the hands of the annuitant notwithstanding that, from one point of view, each periodic payment may be regarded as partly interest on money and partly return of capital: it is said " from one point of view " because it is by no means certain whether that point of view is a sound one. Those who are interested in the controversy may read of it in chap. 9 of the report. Whatever may be the theoretical truth of the matter the practice has been to treat fixed term annuities on a different basis largely, it appears, because in those cases it is possible to tell from the beginning what part of each payment is, on actuarial principles, to be interest and what part is to be return of capital: accordingly in these cases only the former part is regarded as taxable income. As a result has grown up the well-known practice of purchasing two annuities—one for a fixed term to cover the normal expectation of life with perhaps a little to spare followed by a second one which is a deferred life annuity to commence when the fixed term annuity ceases.

It is clear that there is no theoretical difference between the two types of annuity—in either case one can calculate how each instalment is divided—but there is the practical difference that in the case of a life annuity one cannot make that calculation until the dropping of the life. One can, however, at the beginning of the annuity, calculate an approximate or average apportionment of each instalment by dividing the purchase price paid for the annuity by the expectation of life of the annuitant as ascertained from a mortality table, and regarding that sum as the capital content of each payment and the balance as the income content.

With certain qualifications it is recommended that this be in fact done in the future and that tax be levied only on the income content as there ascertained: it is also recommended that the present practice with regard to fixed term annuities should be made statutory.

It is most important to observe that this treatment is not to be accorded to annuities which are payable under or by virtue of a pension or superannuation scheme as is discussed in the main part of the report. They are to be taxed in full on the periodic payments of the basic principle that, if the " build-up " is tax free, the benefit must be fully taxed. On the other hand if a participant in such a scheme elects to take one-quarter (with a maximum of £10,000) of his benefits as a non-taxable lump sum he will be able to expend that lump sum in buying a contractual annuity which will qualify for the treatment now under discussion.

G. B. G.

A Conveyancer's Diary

THE MATRIMONIAL HOME AND THE DESERTED WIFE

THIS is a frequent subject for litigation nowadays. The reported cases of the last three or four years were considered in a series of articles in this Diary less than a year ago, with particular reference to the position of a purchaser who seeks possession against the deserted wife of his vendor. The conclusion which I then reached was that if *A*, the estate owner of the house, deserts his wife but allows her to remain in occupation of premises which have up to the desertion been the matrimonial home, and then sells and conveys the legal estate to *B*, *B* is entitled to possession of the house against the wife, irrespective of whether he had notice of the circumstances of her occupation before he purchased or not. This is exactly what happened in *Thompson* v. *Earthy* [1951] 2 K.B. 596, and the authority of that decision had not, in the view which I formed of the cases, been impaired by any other decision on or near the subject at the time when I last considered it in this journal. (The reference to my earlier articles is (1953), 97 SOL. J. 220, 255, 273 and 364.)

Since then there have been two more reported cases bearing directly on the nature of the deserted wife's rights in relation to the matrimonial home—*Lloyds Bank, Ltd.* v. *O's Trustee* [1953] 1 W.L.R. 1460; 97 SOL. J. 832 and *Barclays Bank, Ltd.* v. *Bird* [1954] 2 W.L.R. 319; *ante*, p. 145. The plaintiff in each case was a mortgagee under a mortgage made by the deserting husband, and the facts were not therefore on all fours with those in *Thompson* v. *Earthy*; but the respective positions of mortgagee and purchaser (in the most restricted sense of the word) are sufficiently similar in some respects to make a close examination of these cases obligatory for anyone who wishes to assure himself that the authority of *Thompson* v. *Earthy* has not been affected by the later decisions.

The gist of *Thompson* v. *Earthy* can be very shortly stated. In 1935 *H* married *W*, and they went to live in a house which belonged to *H* as their matrimonial home. In 1946 *H* deserted *W*, who remained in occupation of the house. In 1950 *H* sold and conveyed the house to the plaintiff, who therefore sought to obtain possession of the house from *W*. An order for possession was made on the ground that the plaintiff had proved her title to the house, and *W* had failed to show that she (*W*) had any estate or interest, legal or equitable, therein. Two matters should be noted on this decision. First, if *H* had not sold the house, but had himself brought proceedings against *W* to obtain possession, he would have failed, for such proceedings are proceedings in tort, and at common law a husband cannot bring an action against his wife in tort. (This disability has been the foundation on which all arguments seeking to invest a deserted wife with a right of occupation of the matrimonial home valid against all the world have been rested.) Second, the order of events is important: the rights of *W*, *qua* deserted wife, such as they were, had accrued at the date of the purchase by the plaintiff.

In *Lloyds Bank, Ltd.* v. *O's Trustee* the order of events was significantly different. In 1940 *H* married *W*, and they went to live in a flat which belonged to *H*. In 1945 *H* executed a mortgage of the flat in favour of the plaintiff bank to secure his overdraft. The mortgage was a legal mortgage. In 1952 *H* deserted *W*, and *W* obtained an order against him under s. 17 of the Married Women's Property Act, 1882, whereby it was ordered (*a*) that *W* should be permitted to occupy the flat and (*b*) that *H* should take no steps (in effect) to sell or part with any interest in the flat until *H* should provide suitable alternative accommodation. The bank called on *H* to pay off his overdraft, and when he failed to do so, brought these proceedings for possession against the trustee in bankruptcy of *H* (who had by then been adjudicated) and *W*. The trustee did not, apparently, resist an order for possession, but *W* did. In view of the order of events it was necessary for her to show that the right which, she claimed, belonged to her by virtue of her status as a deserted wife had accrued to her before the date of the mortgage in 1945, and the argument which was advanced on her behalf sought to fulfil this necessity in this way. It was said that on entering into the matrimonial home a wife, as an incident of her matrimonial status, is entitled to an irrevocable licence to continue to reside on the premises so long as they remain the matrimonial home, subject only to an order being made against her under s. 17 of the Act of 1882. A right such as this, if it existed, would of course in this case have preceded in time the rights of the mortgagee, who, on this footing, must be taken to have entered into the mortgage with the possibility of such a right in mind. This proposition was dismissed by Upjohn, J., as "fantastic." The true position was that whatever rights *W* acquired as a result of desertion were subject to the precedent mortgage, which the mortgagee was entitled to enforce.

This decision was applied to slightly different circumstances in *Barclays Bank, Ltd.* v. *Bird*. I will not trouble the reader with the facts, which were substantially similar to those in the case just mentioned, with this difference only: the mortgage of the matrimonial home in favour of the bank was an equitable, not a legal, mortgage.

It was sought to distinguish the decision in *Lloyds Bank, Ltd.* v. *O's Trustee* on the ground that at the date of the desertion, when the rights of *W* arose, the bank as mortgagee had no legal estate, but merely an equitable interest, in the premises, and that as an equitable mortgagee merely the bank had no right to possession. But this point was decided against the wife, Harman, J., holding that according to the modern practice it is open to an equitable mortgagee to seek possession of the mortgaged premises alone, and not as part of the more elaborate relief of foreclosure (which has always been available to an equitable mortgagee). It followed, therefore, that as the bank's equitable mortgage preceded in time the accrual of *W's* rights as a deserted wife, the bank was entitled to possession: *qui prior est tempore potior est jure*.

As has been seen, the later of these two decisions is no more than an application of the earlier to facts which were held to be not essentially different from those in the earlier case. *Lloyds Bank, Ltd.* v. *O's Trustee* is, therefore, the important case, and the gist of this case is in the finding that "the earliest moment at which the right of the wife to continue to reside in the house of the husband against his will arises is when the husband deserts his wife." That is the general principle which, when applied to the particular facts, justifies the conclusion that "in this case that happened long after the mortgages were created [there were, in fact, two mortgages, not one] and [the wife's right] must therefore be subject to the mortgagees' rights" ([1953] 1 W.L.R., at p. 1467).

This was, doubtless, the convenient way of dealing with the argument that a wife acquires rights in relation to the matrimonial home, other than those which result from her

husband's inability to sue her in tort, from the moment of entering the premises. But another possible method of disposing of the wife's claim in a similar case would be to rely on *Thompson* v. *Earthy*, which, as I understand it, is authority for the broad proposition that a deserted wife in *de facto* occupation of the matrimonial home has no rights of occupation thereover either at law or in equity which can be asserted against a purchaser for value. There can be no difference between the rights in this respect of a mortgagee and those of a purchaser, if the interest acquired is in either case a legal interest, at least if the treatment accorded to mortgagees and purchasers respectively by equity in matters of notice is any guide, and it is not irrelevant that whatever the true definition of a deserted wife's rights in relation to the occupation of the matrimonial home may be, nobody has so far suggested that these are rights at law. Indeed, such a suggestion would now be impossible in any court below the House of Lords.

This examination of these two recent cases shows, I think, quite clearly that the decision in each of them turned on a point which was not, and could not in the circumstances of that case, be material in *Thompson* v. *Earthy*. From this it follows that the authority of that case is not affected by anything decided in those two more recent ones. This is a conclusion of some importance to the conveyancer, for if that decision were to be reversed, or if its authority were seriously questioned, it would be necessary to include in the requisitions on title concerning any dwelling-house requisitions on the vendor's matrimonial life of a kind for which there is no parallel in the books of precedents.

This is a conclusion which, some may think, is satisfactory enough so far as the interests of purchasers are concerned, but which affords small comfort to the deserted wife. But there is something in these two recent cases which may assist the deserted wife also. In each of these cases the wife, after her husband had deserted her, obtained an order under s. 17 of the Married Women's Property Act, 1882, the effect of which was to permit her to continue in occupation of the matrimonial home, in effect, until further order, and during that period to place the husband under an injunction restraining him from selling the premises. There was no such order in *Thompson* v. *Earthy*, but merely an undertaking by the husband given to the magistrates in proceedings for maintenance to allow the wife to continue in occupation of the house. The failure of the wife in that case to assert any right of occupation as against the purchaser was due to the inability to show that she, *qua* deserted wife, had any such right. But if the deserted wife in circumstances such as these obtains an order under s. 17 of the Act of 1882 which enjoins the husband from selling the premises, the right which the wife attempted unsuccessfully to assert in *Thompson* v. *Earthy* may, perhaps, be successfully asserted in another way through the disability of the husband to sell, and if that disability can be brought to the attention of a potential purchaser in time, it is unlikely that he will go on with the purchase and risk the consequences of participation in an action which will be punishable as a contempt. A deserted wife should, therefore, wherever possible, obtain an order under s. 17 in the terms of the order made in the two cases considered above, and, having obtained it, register it as an order of the court under Pt. III of the Land Charges Act, 1925.

In making this suggestion I do not withdraw any of the remarks which I made on the registration of the right of a deserted wife, such as it is, to occupation of the matrimonial home in my earlier articles on this subject (97 SOL. J., at p. 274). What I had there in mind was the right of the wife which, on the authority of *Thompson* v. *Earthy*, as against a purchaser for value is nugatory. What I have now in mind is not the right of the wife, but the prohibition by injunction of the husband from selling, which, having arisen by order of the court, is *prima facie* eminently suitable for registration as such an order.

"A B C"

Landlord and Tenant Notebook

EQUITABLE MORTGAGEE'S QUALIFICATION FOR VESTING ORDER

IN the old days, the position was that if the Court of Chancery, exercising jurisdiction connected with the Lord Chancellor's functions as keeper of the royal conscience, thought that a landlord was acting unconscientiously in re-entering under a power, it would step in and say "No, you don't." The position was considered unsatisfactory in point of certainty and the Common Law Procedure Act, 1852, ss. 210–212, regularised it as far as forfeiture for non-payment of rent was concerned. This enactment made provision for persons claiming under the lessee as well as for the lessee himself; but in general its object was to curb the power of the Court of Chancery by introducing a time limit. Other causes of forfeiture attracted the attention of the Legislature in 1881, the requirements being set out in s. 14 of the Conveyancing Act of that year. That enactment, however, did nothing for underlessees, etc., who might suffer considerably on the head lease being forfeited; relief for underlessees, by way of vesting orders, was introduced by the Conveyancing Act, 1892, s. 4. Its provisions are now part of the Law of Property Act, 1925, s. 146, the section which codifies the law relating to forfeiture for causes other than non-payment of rent; as regards vesting orders, however, express provision was made to cover such causes. Subsection (4) entitles any person claiming as underlessee any estate or interest in the property to apply for a vesting order, and by subs. (5) "underlease" includes an agreement for an underlease where the underlessee has become entitled to have his underlease granted. This is in Pt. V. At the same time Pt. III of the Act overhauled the law relating to mortgages. The effect of both sets of provisions has now been demonstrated in Harman, J.'s short, syllogistic judgment in *Re Good's Lease; Good* v. *Trustee of the Property of W, a Bankrupt, and W* [1954] 1 W.L.R. 309; *ante*, p. 111.

The facts were that the applicant seeking a vesting order in the proceedings had guaranteed a loan made to a lessee by a bank, the lessee undertaking, in the event of the applicant being called upon to make any payment under the guarantee, to execute a proper legal charge or mortgage. The undertaking was given in an instrument under hand. The lease and assignment (the borrower was an assignee) were deposited with the applicant. The bank so called upon him, shortly after a receiving order had been made against the lessee, and he paid some money and agreed to pay more by instalments. He did not, however, avail himself of his right to the execution

of a legal mortgage. A few months later, the lessee apparently having been adjudicated bankrupt, the lessor issued a specially endorsed writ against him and his trustee, claiming possession. It is to be gathered from a parenthetic passage in the judgment that the cause of action was forfeiture and the grounds both bankruptcy and non-payment of rent.

The question then arose whether the applicant was qualified to make the application; mortgagees by sub-demise had been held to pass the test, but this was the first occasion on which an equitable mortgagee had sought a vesting order. The reasoning by which Harman, J., reached the conclusion that the applicant was qualified proceeded by stages, and was directed to establishing two propositions: That the applicant was, in effect, a party to an underlease; and that he was one entitled to have the lease granted.

It was by invoking s. 87 of the 1925 Act that Harman, J., was able to entertain the application of one who, at first sight, would appear to be an unlikely candidate; for he had no legal term or estate in the premises. Taken step by step, the argument proceeds: The court may (as it thinks fit) make a vesting order on application by any person claiming an underlease (s. 146 (4)); an underlessee includes a party to an agreement for an underlease where the underlessee (*sic*: surely "intending underlessee" would have been more accurate) has become entitled to have his underlease granted (s. 146 (5)); a mortgagee who has a legal mortgage created by a charge by deed is entitled to the same protection, powers and remedies as if, where the mortgage is a mortgage of a term of years absolute, a sub-term less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee (s. 87 (1)); the applicant's right was, therefore, to have a legal charge which would have the same incidence as a mortgage by sub-demise, which was an underlease. As to the "has become entitled to have his underlease granted" requirement, that was fulfilled when he made the payment to the bank, and the fact that he did not make a formal demand for a sub-lease made no difference. The lease concerned must have had some value, as we are not told anything about any attempt by the trustee to disclaim it, and the applicant was perfectly willing to pay the arrears of rent and to enter into covenants with the landlord corresponding to those in the lease, and the discretionary relief was granted on terms accordingly. If the trustee had sought to disclaim, it may well be that a vesting order would have been made on the same terms. The Bankruptcy Act, 1914, s. 54 (6), does not leave the court so wide a discretion as does the Law of Property Act, 1925, s. 146 (4), which is content to prohibit the compulsory grant of a lease for any longer term than the underlessee had under his original underlease. The bankruptcy enactment expressly stipulates terms by which the applicant is to be made subject to the same liabilities and obligations as the bankrupt was subject to under the lease at the date when the petition was filed or "if the court thinks fit" subject only to those liabilities as if the lease had been assigned to him at that date. The effect appears to be that, in an apt case, the applicant might not be made to pay all the arrears of rent due from the bankrupt. There was no occasion to mention what these amounted to in *Re Good's Lease* and it does not look the sort of case in which there was ground for modification to the prejudice of the landlord, whose interests are not always overlooked by this kind of legislation.

Another difference between the position of an applicant basing his claim on the Law of Property Act, 1925, s. 146 (4), and one proceeding under the Bankruptcy Act, 1914, s. 54 (6), is that the qualification under the latter is stated in much wider terms: "Any person, either claiming an interest in any disclaimed property, or under any liability not discharged by this Act in respect of the disclaimed property." The guarantor concerned in *Re Good's Lease*, who managed to qualify under the Law of Property Act on the strength of what looks like an agreement to buy a pawn-ticket, would have had an easier task under the Bankruptcy Act.

R. B.

HERE AND THERE

THE MYSTICAL ENGLISH

ENGLISHMEN, even in their highest judicial pronouncements, quite often boast of being illogical, apparently under the rather curious impression that exact processes of thought and their application to life are in some way unpractical and pedantic. But if they imagine that in their own proceedings they are practical and hard-headed, they are very much mistaken. Their charm is the charm of their own weather; it lies in their devotion to the imponderable, the variable, the unpredictable. It is well known, for instance, that while nations not so blest have only climates and codes, we alone have in the full sense weather and the common law, full of light and shade and swift surprises and ever variable like a charming woman. Every now and then foreign influences get to work on us—Roman, Norman, transatlantic business enterprise or a wave of intellectual foreign refugees—and set about rather irritably trying "to straighten out the the crooked road the English drunkard made." But in the long run they only leave behind them some elvish curiosity in the landscape or yet another odd twist in the body politic, no less strange than the twists which the English periodically give it themselves in their recurring and variable fits of mystical enthusiasm, the enthusiasm for Puritanism in the past, which still anachronistically props up our licensing laws, or their current economics-defying enthusiasm for the Welfare State.

WHAT IS IN A NAME?

To foreigners for whom neatness is all, the whole thing is very puzzling and sometimes infuriating. For instance, I am told that in all the fantastic convolutions of the Chesney story (in which life has once again triumphantly reasserted the fact that truth is stranger than fiction) the thing that puzzles the French most is to understand how John Donald Merrett became Ronald Chesney. The English with their innocently chaotic approach to life would ask rather vaguely if a man can't change his own name, whose name can he change? It's his, isn't it? Why can't he change it like his shoes or his coat?—always supposing that in kicking off his shoes he isn't trying to confuse his tracks for a felonious purpose and that in turning his coat he is committing no fraud. But the French don't see it at all in that light. What's in a name? They would answer that there's your background, your inheritance, your origins, a pointer perhaps to your class and your local habitation. It is not, they would say, in the public interest that you should discard so revealing an identification plate and substitute another at your fancy—as well let a motorist change his number plates at his whim or impulse. So, whereas in England it is regarded as no more than a convenient precaution to change one's name by deed poll or else by the more complicated process of obtaining a peerage, in France formalities succeed formalities before you manage to shed the birthright of an unappreciated

patronymic. First you must apply for an order from the office of the Prime Minister. This must then be countersigned at the Ministry of Justice. Finally, the Conseil d'Etat must accord its blessing on the transaction. Nor must you, even after so long a pilgrimage through the government offices, hope to be utterly released from your own and your family's past. Your new name must bear some resemblance to your old one. Thus, for example, Mr. Smellie might perhaps be allowed to transform himself into "Snell," though doubtless a conscientious official could try to pursuade him to compromise with "Smelt." The refuge is generally available to persons with names likely to bring them into hatred, ridicule or contempt. But the process is not meant to provide indiscriminately masks, dominoes or disguises.

THE LOST LORD

THE French and the Germans and the international police have heard of Chesney or Merrett, but they have not yet heard of the problem and mystery of Finchingfield. But, if they had, they would probably be even more puzzled at the constitution and manners of the English. Finchingfield is a very beautiful village in Essex and one of its chief ornaments is its village green, which is (or was) divided by footpaths into six parts. But for several years now motorists have been nibbling away at it, eroding it inch by inch with their wheels until at last two parts of it have virtually vanished. Now, if the inhabitants of a French village had a complaint of that sort, it would be a fairly simple matter for their legal advisers to look up the section of the code relating to highways or motorists or communal property, to discover, aye or no, had they a remedy and to put the appropriate machinery in motion. Not so in England. No one apparently can move in the matter but the Lord of the Manor, and at Finchingfield they have mislaid him. No one was ever very sure where the lord of the manor really came from (he may have been originally the lord of the Roman villa) and now in hundreds of English communities no one knows where he has gone to. Saxon and Norman conquerors have come and gone. The feudal system has flourished and decayed. The industrial-commercial jungle has swallowed up vast tracts of English land. The scientific-managerial revolution has stolen the impetus of the religious Reformation. The landowner who once swallowed alive his smaller neighbours is now in full process of being boa-constricted by the Inland Revenue. But, still peeping out of the Middle Ages, like a gargoyle half hidden in the grass, the Lord of the Manor is with us yet, even though the Finchingfield people have mislaid theirs and are employing their legal advisers to find him. Their solicitor has told the Press that, for all anybody knows, he may be on the other side of the world, for some people collect manorial rights like stamps, by the dozen, and never get round to visiting some of them at all. It gives one a fascinating idea of what to do with the money if one won a really big pools prize. I myself would seek out manors where the rents were paid in terms of roses in winter and snowballs in summer. Perhaps it is too late to find some forgotten valley where the *jus primæ noctis* is still operative (if it ever existed anywhere) —but you never can tell what improbability you will find in this island. Until fairly recent times the Castle of Sauchimuir was held on the terms of providing a supper for a ghost every New Year's eve. The castle is now a ruin, burnt down (it was said) after the tenant had provided an inferior port for the ghost.

RICHARD ROE.

THE RÔLE OF THE SOLICITOR IN MODERN SOCIETY

THE lecture recently given at University College London by Professor R. C. FitzGerald on this important subject was briefly noted at p. 117, *ante*. In view of its outstanding interest for the practitioner, however, the following fuller account of the lecture has been prepared from material kindly made available by Professor FitzGerald. The full lecture will be published in the 1954 "Current Legal Problems."

Referring first to the complexity of present-day law, illustrated not only by the mass and intricacy of modern legislation and the current rapid development of the common law to keep pace with social change, but also by the growth of departmental tribunals, Professor FitzGerald remarked on the unique place occupied by solicitors as the point of contact between the citizen and the law. He agreed with Mr. Seton Pollock's observations on this subject in the *Law Society's Gazette* (1953), Vol. 50, p. 18, and said that they raised the important question whether the profession and its members were adequately fulfilling their obligations to the community.

So far as concerned those in private practice, the individual solicitor had to ask himself what, in the public interest, was the best way for him to use his professional talents and abilities. If his personality was such that it did not inspire other persons to place reliance in him, then, even if he had a real liking for private practice, he should seek some other more appropriate form of public service. If, on the other hand, he felt that his form of public service should be private practice, specialisation was necessary if he was to do his duty properly by his clients. The law to-day was such that no solicitor could justly hold himself out to the public as being able to give sound advice on any and every point of law, as was shown by *Otter* v. *Church, Adams, Tatham & Co.* [1953] 1 Ch. 280, *Pilkington* v. *Wood* [1953] 1 Ch. 770 and *Griffiths* v. *Evans* [1953] 1 W.L.R. 1424. If this were so, the day of the "one-man" firm was ended, and solicitors should specialise and go into partnership with others who specialised in other fields, so that the office could be organised on departmental lines, albeit with the utmost co-operation between departments. "The professional status," said Professor FitzGerald, "carries with it more than it has ever done before a duty to serve the public with intelligence and competency, as well as with integrity and unselfishness, and that duty can only be performed by the profession adapting itself to the changing conditions of modern life." Nevertheless, it was necessary to avoid creating firms which were too large to have the personal atmosphere which was desired by the client, whose business almost always involved a personal and human element and to whom a friendly atmosphere was important.

Economic pressures played their part in the trend away from "one-man" practice. Overhead expenses were causing solicitors to look to the organisation and management of their offices, but the expense of mechanical office devices would possibly prove another nail in the coffin of the small firm. The provision of working capital out of income was a difficult problem, and the public interest required that it should be made possible for a firm to set aside a proportion of profits to a capital replacement fund account before arriving at profits liable to tax.

Turning to solicitors engaged in business and official service, Professor FitzGerald said that they really constituted a new class in the legal profession. Solicitors entering this kind of employment had to undergo a mental readjustment and acquire the "business outlook" and work as one of a team, but must never compromise their status as members of an independent profession. He thought that solicitors would be called upon to undertake still more responsibilities in these spheres, and commented on the fact that at present law students are prepared for private practice only. If that state of affairs were to continue he felt that the profession would not be playing its proper part in the running of the Welfare State.

After describing in some detail the constitution and functions of The Law Society, Professor FitzGerald gave factual accounts of the Compensation Fund, the Accounts Rules, the Disciplinary Committee, the Legal Aid Scheme, and professional remuneration before turning to a consideration of the relations between barristers and solicitors. He found a parallel to this division into two branches in the history of the attorneys and the solicitors from the Middle Ages until their amalgamation in the

mid-eighteenth century. Limitations in the attorney's sphere of activity, imposed by technicalities, had called into being the solicitor, who was free from these restrictions and was able to meet new needs occasioned by legal and social developments. History was repeating itself in the present day. The rise of administrative tribunals, coupled with present day economic and social conditions, were having an adverse effect on the barrister's profession, and the question of fusion of the two branches had come to the fore. It was a question which must be looked at from the public viewpoint and not from that of professional or vested interest. The lecturer thought that if the legal profession had to be created to-day for the first time it would not take its present form, and, that being so, it would be very wrong to oppose fusion for purely professional reasons. Fusion, he thought, was bound to come, and the time had arrived for solicitors to pay greater regard to advocacy and produce their own specialists in that field.

Meanwhile, Professor FitzGerald asked, should not something be done to rationalise relations between the two branches? He instanced the rule that it is improper for a barrister to attend conferences at a solicitor's offices, and the rule that a barrister may accompany his solicitor client upon the inspection of documents if *in the barrister's judgment* it is necessary in the interests of his client that he should personally inspect them. Solicitors, who were personally liable for a barrister's professional fees, should insist on suitable modification of such rules.

Undue emphasis was put upon the distinction between the "upper" and "lower" branches of the legal profession, but solicitors should not allow the development of their profession to be retarded by outmoded traditions. Their growth during the last fifty years had been so great that fusion should now be regarded as a natural and proper development. Every opportunity should be taken to promote friendly relations with the public. The everyday difficulties of the citizen had enormously increased, and he yearned for a person qualified technically and intellectually to guide him and treat his problems with patience and tolerance and in a spirit of human understanding. The solicitor was well able to play that rôle: it was a social responsibility and duty willingly assumed with full consciousness of the obligations it carried.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

HOUSE OF LORDS

CRIMINAL LAW: WITNESS ACQUITTED BEFORE TRIAL OF ACCUSED ON SAME CHARGE: WHETHER ACCOMPLICE

Davies *v.* Director of Public Prosecutions

Lord Simonds, L.C., Lord Porter, Lord Oaksey, Lord Tucker and Lord Asquith of Bishopstone. 19th February, 1954

Appeal from the Court of Criminal Appeal ([1954] 1 W.L.R. 214; 98 SOL. J. 64).

The appellant, together with other youths, attacked with their fists another group, one of whom subsequently died from stab wounds inflicted by a knife. Six youths, including the appellant and one Lawson, were charged with murder, but finally the appellant alone was convicted, Lawson having been among those against whom no evidence was offered and who was found not guilty of murder but convicted of common assault. At the appellant's trial Lawson gave evidence for the prosecution as to the use of a knife by the appellant, but the judge did not warn the jury of the danger of accepting his evidence without corroboration. This omission was the main ground of the appeal. The Court of Criminal Appeal dismissed it, and the House of Lords likewise dismissed an appeal from the decision of that court.

LORD SIMONDS, L.C., said that, in a criminal trial where a person who was an accomplice gave evidence on behalf of the prosecution, it was the judge's duty to warn the jury that, although they might convict on his evidence, it was dangerous to do so unless it was corroborated. This rule, although a rule of practice, now had the force of a rule of law. Where the judge failed to warn the jury in accordance with this rule, the conviction would be quashed, even if in fact there was ample corroboration of the accomplice's evidence, unless the appellate court could apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907. The following persons, if called as witnesses for the prosecution, were treated as accomplices: (1) persons who were *participes criminis* in respect of the actual crime charged, whether as principals or accessories before the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours); (2) receivers had been held to be accomplices of the thieves from whom they received goods on a trial of the latter for larceny; (3) when *X* had been charged with a specific offence on a particular occasion and evidence was admissible, and had been admitted, of his having committed crimes of this identical type on other occasions, as proving system and intent and negativing accident; in such cases the court had held that in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it was dangerous to accept it without corroboration. Neither of these extensions affected the present case. Lawson, if he was to be an accomplice at all, must be an accomplice in the crime of murder. There was no reason for any further extension of the term "accomplice." If all that was envisaged was a common assault and there was no evidence that Lawson, a party to the common assault, knew that any of his companions had a knife, he was not an accomplice in the crime consisting of its felonious use. All suggestion of a concerted felonious onslaught had by consent been expunged from the Crown's case. The appeal should be dismissed.

The other noble and learned lords concurred.

APPEARANCES: *D. Weitzman*, Q.C., *R. R. Russell* and *Peter Weitzman* (*Thomas V. Edwards & Co.*); *Sir Lionel Heald*, Q.C., A.-G., *Christmas Humphreys* and *Maxwell Turner* (*Director of Public Prosecutions*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 343**

COURT OF APPEAL

PRIVATE STREET WORKS: "INSUFFICIENT OR UNREASONABLE"

Southgate Borough Council *v.* Park Estates (Southgate), Ltd.

Somervell, Birkett and Romer, L.JJ. 11th February, 1954

Appeal from the Divisional Court ([1953] 3 W.L.R. 1274; 97 SOL. J. 742).

The Private Street Works Act, 1892, provides by s. 6 that an urban authority may pass a resolution to execute works in a private street, the expense of which is by s. 10 to be apportioned among the frontagers unless the authority resolves otherwise. By s. 7 an assessed frontager may "object to the proposals . . . on any of the following grounds . . . (*d*) that the proposed works are insufficient or unreasonable . . ." By s. 8, such objection is to be heard and determined by a court of summary jurisdiction, who may "quash . . . or may amend the resolution, plans, estimates and provisional apportionment and any of them." A company owned a building estate which was only partly developed; the local authority wished to acquire the undeveloped part as an open space, and an appeal regarding the development of this part was before the Minister. The local authority passed a resolution to execute certain works in a private street on which the company were frontagers and would be chargeable. The company lodged an objection under s. 7 (*d*), which the justices rejected. On appeal, quarter sessions quashed the resolution on the ground that it was "unreasonable" because it was premature, in that, if the Minister allowed further building, the street would be insufficient and would have to be dug up again to put in the necessary services. The Divisional Court dismissed an appeal by the local authority, holding that quarter sessions had jurisdiction to hold that the proposed works were "unreasonable" because premature. The local authority appealed.

SOMERVELL, L.J., said that, if the company's appeal to the Minister succeeded, so that further building along the street was allowed, there would be heavy constructional traffic on the newly-made road, which would have to be dug up again. That would involve a waste of money, and, on the face of it, there was nothing more unreasonable than to spend in one year a lot of money on a road which would be largely destroyed by the following year, and in the absence of authority, that was just the

sort of thing against which the frontagers had a right to protest. But the question of construction was settled in their favour by *Sheffield Corporation* v. *Anderson* (1894), 64 L.J. M.C. 44, a case binding on the court; and *Mansfield Corporation* v. *Butterworth* [1898] 2 Q.B. 274, on which the Divisional Court had relied, was to the same effect. The appeal should be dismissed.

DENNING and ROMER, L.JJ., agreeing, said that to spend large amounts of frontagers' money on a road which might be smashed up in the near future was plainly unreasonable. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *J. R. Willis* and *C. Hodson* (*Gordon H. Taylor*, Town Clerk, Southgate); *D. Ackner* (*Rawlinson & Son*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 337**

CHANCERY DIVISION

LEGALLY AIDED PLAINTIFF RESIDENT OUT OF JURISDICTION: SECURITY FOR DEFENDANTS' COSTS

Friedmann *v.* Austay (London), Ltd.

Roxburgh, J. 9th February, 1954

Procedure summons.

An action was commenced by a German national, resident in Hamburg, against English defendants, in which he claimed an account "of all goods bought and of all goods sold by the defendant company as the result of introductions made by the plaintiff and of the amount of commission due to the plaintiff in respect thereof." He also claimed payment of the amount found due with interest and, in the alternative, damages for breach of contract. He had obtained a civil aid certificate. The plaintiff made an interlocutory application to the master, by summons, in which he sought an order pursuant to R.S.C., Ord. 15, r. 1, that an account (in the terms above set out) might be taken "and that all necessary inquiries and directions be taken and made and that provision be made for the costs of this application." This procedure summons was then taken out by the defendant company in which they applied "for an order that the plaintiff give security for the defendants' costs in this action to the satisfaction of the master on the ground that the plaintiff resides at 75 Brennerstrasse, Hamburg I, Germany, out of the jurisdiction of the court, and that in the meantime all further proceedings be stayed, and that the costs of this application be the defendants' in any event."

ROXBURGH, J., said that the National Assistance Board had determined the plaintiff's disposable income at under £156, his disposable capital as nil and his maximum contribution as nil. It was very difficult to see how they could make such determinations. The plaintiff had complicated his case by claiming an account on a footing other than in accordance with the wording of the contract; that raised a preliminary point for determination, on what footing the account ought to be taken, and it would not be right to order an account at the present stage. But for the civil aid certificate, it was a plain case for an order for security for costs. There was some guidance in the matter from *Jackson* v. *J. Dickinson & Co. (Bolton), Ltd.* [1952] W.N. 9; [1952] 1 All E.R. 104, where it was held that, the plaintiff being resident out of the jurisdiction, the fact that he was an assisted person did not disentitle the defendants to an order for security; but that case did not lay down that they were always entitled to it. Somervell, L.J., had said that the fact that the plaintiff was an assisted person was some indication that a full order for costs would not be made against him, but, having regard to the terms of the certificate, some order might be made. On that, the present plaintiff contended that, as his contribution was nil, no security should be ordered. That seemed to go rather beyond the words of Somervell, L.J. Further, it raised procedural difficulties of great complication. It could not be suggested that the National Assistance Board's figures were conclusive, though it was difficult to get away from them. It was not feasible, from the business point of view, to apply a means test before deciding about security; nor would it be just to the defendants if in every such case the National Assistance Board certificate should be accepted as sufficient evidence of means. Therefore it was a case in which some security should be ordered, and the question was how much. The fact that legal aid had been granted was relevant, and a sum should not be exacted which might have penal consequences. A factor in the present case was that the plaintiff had not been content to rely on the terms of his contract, which introduced a complication which suggested that the figure should be rather larger than that which would have been otherwise ordered. Taking everything into consideration, the proper sum was £40, and the action would be stayed until security for that sum was given.

Order accordingly.

APPEARANCES: *Neil Lawson* (*Kenneth Brown, Baker, Baker*); *I. Goldsmith* (*Cardew-Smith & Ross*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 466**

AGRICULTURAL TENANCY: NOTICE TO QUIT: VALIDITY

Woodward *v.* Earl of Dudley

Danckwerts, J. 10th February, 1954

Adjourned summons.

An agricultural holding was let to the plaintiff's father and grandfather as joint tenants by a memorandum of agreement dated 24th September, 1928. The father died on 13th May, 1948, and the grandfather died on 17th September, 1952. The plaintiff was the sole executor of the grandfather's will. On 5th February, 1953, the landlord served a notice to quit on the plaintiff which, on the face of it, referred to only part of the property comprised in the agreement of 1928. The notice concluded: "The reason for giving this notice to quit is as follows: The said E. C. W. [the father] died some years ago and the said C. W. [the grandfather] died on 17th September, 1952." The notice to quit was directed to the personal representatives of C. W., deceased, the surviving tenant under the agreement. The plaintiff contended that the notice was invalid because: (1) it referred to part only of the property comprised in the tenancy, and (2) the word "tenant" in s. 24 (2) (*g*) of the Agricultural Holdings Act, 1948, included the plural, and as both the tenants had not died within three months of the notice being given, it was ineffective. The provision in subs. (1) of s. 24 of the Agricultural Holdings Act, 1948, that a notice to quit an agricultural holding requires the consent of the Minister is subject to the exception, *inter alia*, in subs. (2) (*g*) where "the tenant with whom the contract of tenancy was made had died within three months before the date of the giving of the notice to quit, and it is stated in the notice that it is given" for that reason. By s. 1 of the Interpretation Act, 1889, words in the singular in a statute may include the plural.

DANCKWERTS, J., said that it was plain from *In re Bebington's Tenancy* [1921] 1 Ch. 559 and other cases that a notice to quit which referred only to part of the land included in the tenancy was invalid and ineffective. The notice in the present case was bad because it referred in the most definite terms possible to part only of the property included in the tenancy. Although that was sufficient to dispose of the case he would also consider the point raised under s. 24 of the Agricultural Holdings Act, 1948. As words in the singular in a statute may, by s. 1 of the Interpretation Act, include the plural, the notice should have read "the tenants" with whom the contract of tenancy was made having died, but the tenants were the father and grandfather of the plaintiff, both of whom had not died within three months of the notice being given. The case could not, therefore, be brought within para. (*g*) of subs. (2) of s. 24, and since the consent of the Minister had not been obtained the notice was invalid for that reason also. Declaration accordingly.

APPEARANCES: *A. C. Goodall* (*George Tilling & Knight*, for *Norman E. Kelly*, Watford); *H. F. J. Teague* (*Taylor and Humbert*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 476**

LANDLORD AND TENANT: PROPOSED UNDERLETTING AT LOW RENT WITH PREMIUM: LANDLORD'S CONSENT REFUSED: REASONABLENESS

***In re* Town Investments, Ltd., Underlease; McLaughlin *v.* Town Investments, Ltd.**

Danckwerts, J. 15th February, 1954

Adjourned summons.

The defendants, present owners of a term of sixty-three years from the 25th December, 1932, demised to one *M* by an underlease dated the 23rd October, 1951, the property, certain business premises in the West End of London, for a term of twenty-one years. This underlease contained a covenant not to assign or part with the possession of the demised premises or any part

thereof without the landlord's consent, which was not to be unreasonably withheld. At the date of the underlease there were in existence certain tenancies of parts of the property, and the underlease was made subject to them. In September, 1953, *M* agreed to underlet part of the premises (subject to the defendants' consent) to one *R* from the 24th June, 1953, until the 26th September, 1972, at a rent which was well below the rent currently obtainable in the open market for this part of the premises, and in consideration of a substantial premium. The defendants objected to the proposed underletting on the grounds (*a*) of the lack of security which it was contended would arise by reason of the low rent payable by the undertenants in the event of *M* or his assigns failing to carry out the obligations of his underlease, and (*b*) the depreciatory effect which it was claimed the underletting at an unduly low rent would have in the event of the defendants wishing to dispose of the property by sale or mortgage. By the summons *M* asked for a declaration that the defendants' refusal was unreasonable and that he was entitled to sublet.

DANCKWERTS, J., said that if a lessee made default, the landlords would normally have a right of re-entry; but an underlessee could obtain relief under s. 146 (4) of the Law of Property Act, 1925, the normal terms being that he should assume the obligations of the lessee as to rent or otherwise; so that on that ground the present defendants were not likely to suffer injury. If a lessee became bankrupt, and his trustee disclaimed the lease, the probable result would be that the under-tenant would apply for a vesting order under s. 54 (6) of the Bankruptcy Act, 1914, but under any such order he would have to assume the same liabilities and obligations as those contained in the bankrupt's lease. Further, under the Law of Distress Amendment Act, 1908, landlords might require an underlessee to pay all future rent to them direct; if the rent reserved by the underlease was low, the landlords' remedy might not be wholly effective, and, on the evidence in the present case, it seemed that there would be a risk of a deficiency if the plaintiff defaulted. On the question of depreciation, the defendants' evidence was twofold; first, that after a time there was a tendency to overlook or discount a premium; and secondly that an intending purchaser or mortgagee, if he found that the sum of the rents of the underlessees was lower than the rent of the lease, might think that that rent represented an over-value. The usual ground of objection was concerned with the financial stability of the proposed underlessee, or with the proposed use of the premises. Neither of those grounds arose in the present case, which seemed to be without precedent. The two cases which seemed to be of most assistance were *Premier Confectionery (London) Co., Ltd.* v. *London Commercial Sale Rooms, Ltd.* [1933] Ch. 904 and *Shanly* v. *Ward* (1913), 29 T.L.R. 714. From those cases it appeared that landlords were entitled to consider the effect which the proposed underletting would have on their ability to let different parts of their property satisfactorily in the future; and that they were entitled to refuse consent if they thought that their property interests might be damaged, even though others might take a different view. A lessor who took a premium as a consideration for a reduced rent subtracted something substantial from the future earnings of the property. It could not be said that the defendants' fears were unfounded and they had not been unreasonable is disapproving a transaction which they thought would depreciate the value of their property.

Application dismissed.

APPEARANCES: *E. Milner Holland*, Q.C., and *T. M. Eastham* (*Isadore Goldman & Son*); *L. A. Blundell* (*Burton & Ramsden*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 355

QUEEN'S BENCH DIVISION

AFFILIATION ORDER AGAINST AMERICAN SOLDIER: ARREARS: IMMUNITY

R. *v.* Birkenhead Borough Justices; *ex parte* Smith

Lord Goddard, C.J., Cassels and Slade, JJ.
9th February, 1954

Application for an order of mandamus.

On 17th April, 1953, the applicant obtained an affiliation order against a soldier serving in the American forces in England. Payments under the order were made but they eventually became in arrear and the applicant applied to the justices at Birkenhead under ss. 64 (1) and 74 of the Magistrates' Courts Act, 1952, for the issue of a warrant to bring the American soldier before the court that he might be committed for non-payment. The proceedings took place on the footing that the defendant was a soldier serving in the American forces. The justices, expressing doubts as to their jurisdiction in the circumstances, refused to issue a warrant. The applicant now applied to the court for an order of mandamus.

LORD GODDARD, C.J., said that para. (*b*) of subs. (3) of s. 2 of the schedule to the United States of America (Visiting Forces) Order, 1942, conferred on American soldiers serving in this country the same privileges or immunities as were conferred by s. 145 of the Army Act, 1881, on British soldiers, which provided that the person or the pay of a British soldier could not be taken in execution for the purpose of enforcing a bastardy order. It followed that if a court in this country were asked to make an order which could only result in commitment against an American soldier, the court would be right in refusing to do so because such an order would be contrary to the provisions of the Army Act, which had been extended to American soldiers. The justices were, therefore, justified in refusing to issue their warrant and the court would not order them to do otherwise. It appeared that the American solider had left the country, so that if the justices issued a warrant there would be no means of serving him or of issuing execution on him in America. It was some satisfaction, however, to learn that the matter was engaging the attention of Her Majesty's Government.

CASSELS and SLADE, JJ., concurred. Application for mandamus refused.

APPEARANCES: *C. J. I. Cunningham* (*Field, Roscoe & Co.*, for *Berkson & Berkson*, Birkenhead); *Sir Lionel Heald*, Q.C., A.-G., and *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 471

SALE OF GOODS: BILL OF LADING FORGED: LATE SHIPMENT: EFFECT ON CONTRACT

Kwei Tek Chao and Others (trading as Zung Fu Co.) *v.* British Traders and Shippers, Ltd.; N. V. Handelsmaatschappij J. Smits Import-Export, Third Party

Devlin, J. 1st February, 1954

Action.

London exporters contracted under a c.i.f. contract to sell to merchants in Hongkong a quantity of chemical known as Rongalite C., shipment to take place not later than 31st October, 1951, payment to be against letter of credit on production of "shipped" bills of lading at the buyers' bank. The buyers pledged the goods with the bank for the amount of the advance. They also contracted to resell the goods to merchants in Hongkong. The goods were not shipped until 3rd November, 1951, but the sellers presented to the buyers' bank bills of lading purporting to show that shipment had been made on 31st October. The bank paid the price. In fact the bills of lading had been forged at the port of loading but the sellers were not responsible for and had no knowledge of the forgery. Owing to the late shipment of the goods the buyers lost their contract for resale in Hongkong, but although they knew before the goods arrived that shipment had not been made until after 31st October they took the goods from the ship, putting them into a go-down and giving the go-down warrants to the bank as their security. The buyers subsequently discovered that the bills of lading had been forged. They were unable to sell the goods owing to a serious fall in the market price in Hongkong, and they therefore sued the sellers for the price, claiming that it was the foundation of the contract that true, accurate and genuine bills of lading should be presented; that the bills of lading, being forged, were a nullity, and that the consideration had wholly failed; alternatively, they claimed damages for breach of contract and loss of profit. The sellers, who denied liability, brought in as a third party a Dutch firm who had supplied the Rongalite at the port of loading, claiming to be indemnified by them against the buyers' claims if there had been any delay or if the bills of lading were not true. The third party denied liability.

DEVLIN, J., found that the Dutch firm or someone on their behalf had committed the forgery, but that no charge of fraud had been made out against the sellers. Although the sellers' failure to ship the goods by 31st October amounted to a breach of contract, the lapse of time before the buyers rescinded was so great that they must be taken to have affirmed the contract. His lordship said that the forgery, though a material alteration, did not render the bill of lading a nullity, as it did not go to the

essence of the document, the primary purpose of the bill of lading being to evidence a contract of affreightment and to enable the buyer to remove the goods from the ship; and even if a bill of lading were rendered a nullity through a material alteration, so that the property did not pass, it was not open to the buyer to avoid the transaction if he had, with knowledge of the fact that the bill was a nullity, acted upon it and received and retained the goods. Accordingly, the buyers' claim for the price, as for a consideration which had wholly failed, was bad in law and in fact and could not succeed. Under a c.i.f. contract a buyer had a right to reject the documents and a right to reject the goods, those rights being separate and distinct in law, and his right to damages on a breach of the seller's obligation to present a correct bill of lading vested when the bill was tendered; that right could not be affected by any action the buyer might take on a subsequent breach by the seller to deliver goods in accordance with the contract, whether the buyer elected to treat the subsequent breach as a breach of condition or as a breach of warranty. Therefore, the buyers were entitled to damages in respect of the breach by the sellers in failing to submit a correct bill of lading on the application of *James Finlay & Co.* v. *Kwik Hoo Tong* [1929] 1 K.B. 400, the true measure of damage being the difference between the contract price and the market price. Had there been one right to reject under the contract, the buyers, in pledging the goods to the bank, would not have been deprived of their right to reject by s. 35 of the Sale of Goods Act, 1893, as the buyer under a c.i.f. contract who received the documents obtained the property in the goods subject to the condition that they revested in the seller if found on examination not be to in accordance with the contract. As the reversionary right to ownership remained in the seller, the buyer could only be said to have "accepted" within the meaning of the section if he committed some act, such as selling the goods, which was inconsistent with the reversionary interest of the seller. Judgment for the plaintiffs.

APPEARANCES: *F. Ashe Lincoln*, Q.C., and *George J. Webber* (*A. Kramer & Co.*); *E. W. Roskill*, Q.C., and *G. G. Honeyman* (*Constant & Constant*); *Michael Kerr* (*Middleton, Lewis & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 365

CHARTERPARTY: LAY TIME: DIFFERING RATES IN BERTH AND STREAM

V. M. Salgaoncar e Irmaos of Vasgo de Gama *v.* Goulandris Brothers, Ltd.

Devlin, J. 12th February, 1954

Special case stated by an umpire.

By a charterparty dated London, 27th November, 1952, the charterers chartered the steamship "Granford" to load a cargo of iron ore of 9,200 tons, 10 per cent. more or less, at captain's option for discharge at Antwerp or Rotterdam, on the terms and conditions mentioned in the charterparty. Clause 5 of the charterparty provided: "The cargo to be shipped at the rate of 600 tons when the vessel is in a berth and 350 tons whilst in stream." The "Granford" loaded in Mormugao a cargo of 9,600 tons of iron ore which she discharged at Rotterdam. At Mormugao the vessel loaded 2,020 tons while in stream and 7,580 tons while in berth. The parties disputed the method of calculating the lay days at the loading port of Mormugao.

DEVLIN, J., in a written judgment, said that the refinement in this case was that instead of there being one daily rate, there were two. A daily rate was an estimate based on what the ship ought, with reasonable diligence, to be able to do and depended to some extent on the facilities afforded at the port of loading. It appeared that in Mormugao, the port of loading in this case, the vessel might not get a berth and might have to do the whole or part of her loading in the stream. That would take much longer than in berth. The owners submitted that when there was one loading place the lay-days were fixed by ascertaining the total quantity loaded and dividing it by the daily rate and, where there were two loading places, the method was just the same, except that one calculated two figures instead of one and added them together; one took the quantity loaded at each place and divided it by the rate appropriate to that place. The charterers said that one had to calculate the lay-days day by day as one went along. For each day the ship was in the stream one debited her, so to speak, with 350 tons; then, if she moved to a berth, one debited her for each day with 600 tons, and when the total debit reached 9,600 tons, the quantity loaded, she had exhausted the lay-days. The reason why the two calculations produced a big difference in this case was that out of the fifteen working days which the vessel spent in the stream she was loading only on the last three days; for the first twelve days, or thereabouts, she lay idle. In his judgment the clause was to be construed as if it contained the words in italics: "The cargo to be loaded (shipped) at the rate of 600 tons when vessel is *loading* in a berth and 350 tons whilst *loading* in stream." Thus, the reduced rate of loading applied only when the stream was actually being used as a loading place and did not refer to the mere presence of the vessel in the stream. The owners' method of calculation was, therefore, correct.

APPEARANCES: *Ashton Roskill*, Q.C., and *Desmond Neligan* (*Sinclair, Roche & Temperley*); *Sir Robert Aske*, Q.C., and *B. B. W. Goodden* (*Stokes & Mitcalfe*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 481

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Civil Defence (Electricity Undertakings) Bill [H.C.] [24th February.
Cotton Bill [H.C.] [23rd February.
Hill Farming Bill [H.C.] [23rd February.
Industrial Diseases (Benefit) Bill [H.C.] [23rd February.
Royal Irish Constabulary (Widows' Pensions) Bill [H.C.] [23rd February.

Read Second Time:—

Rights of Entry (Gas and Electricity Boards) Bill [H.C.] [24th February.

Read Third Time:—

Charitable Trusts (Validation) Bill [H.L.] [24th February.

In Committee:—

Food and Drugs (Scotland) Bill [H.L.] [23rd February.
Pests Bill [H.L.] [25th February.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Town and Country Planning Bill [H.C.] [26th February.

To make provision for compensation and other payments by reference to claims for payments under section fifty-eight of the Town and Country Planning Act, 1947; to make further provision as to the acquisition of land by public authorities, as to compensation in respect of orders revoking or modifying permission to develop land and in respect of damage to requisitioned land, as to development charges, as to monopoly value of licensed premises, as to Exchequer grants under the said Act of 1947, and as to payments under section fifty-nine of that Act, and to amend other provisions of that Act; to make further provision for the modification of mining leases and orders granting working rights, and as to contributions to the Ironstone Restoration Fund; to make provision for the dissolution of the Central Land Board; and for purposes connected with the matters aforesaid.

Read Second Time:—

British Industries Fair (Guarantees and Grants) Bill [H.C.] [23rd February.
British Transport Commission Bill [H.C.] [23rd February.
Ilford Corporation Bill [H.C.] [25th February.
Newport Corporation Bill [H.C.] [25th February.

B. QUESTIONS

FREE LEGAL ADVICE SCHEME

In reply to several questions as to when the Government intended to introduce the free legal advice service, the ATTORNEY-GENERAL said that he was not yet in a position to make any statement. [22nd February.

PRIVATE BILLS PROCEDURE

Asked whether he would consider taking steps to amend the law whereby borough and urban district councils promoting Private Bills were subject to the procedure of town meetings and town polls, Mr. ERNEST MARPLES said this matter raised important issues which could not readily be dealt with by question and answer. [23rd February.

ROBBERY WITH VIOLENCE

The HOME SECRETARY said that the number of men aged eighteen and less than thirty convicted in the years 1947 to 1952 of offences of robbery under s. 23 (1) of the Larceny Act, 1916, was 1,335. The figure for 1953 was not yet available. He believed that every year the penal provisions recently introduced were having more effect on the problem. [25th February.

PETTY SESSIONAL DIVISIONS (LONDON)

The HOME SECRETARY said that the Magistrates' Courts Committee had reviewed the division of the County of London into petty sessional divisions and intended to submit a draft order to him in due course proposing certain alterations. [25th February.

AFFILIATION ORDERS AGAINST U.S. SERVICEMEN

Mr. NUTTING said that no formal representations had been made to the American authorities about the problem of affiliation orders made in this country against U.S. servicemen. He saw no need for formal representations while discussions were going on and the U.S. Government were ready and anxious to help. [22nd February.

The HOME SECRETARY said that discussions with the American authorities were being pressed forward as quickly as possible. He was informed that the American authorities had received less than 1,000 inquiries about illegitimate children from 1948 to the present, and in a substantial proportion of those cases the marriage of the parties had followed. [25th February.

STATUTORY INSTRUMENTS

Draft **Civil Defence** (Transport) Regulations, 1954. 5d.

Coal Industry Nationalisation (Payment of Costs) Regulations, 1954. (S.I. 1954 No. 181.)

Currency and Bank Notes Act, 1954 (Commencement) Order, 1954. (S.I. 1954 No. 172 (C. 2).)

Hanningfield Water (Extension of Time) Order, 1954. (S.I. 1954 No. 165.)

Import Duties (Exemptions) (No. 2) Order, 1954. (S.I. 1954 No. 178.)

Improvement of Live Stock (Licensing of Boars) (England and Wales) Amendment Regulations, 1954. (S.I. 1954 No. 183.)

Improvement of Live Stock (Licensing of Boars) (Scotland) Amendment Regulations, 1954. (S.I. 1954 No. 179 (S. 21).)

Iron and Steel (Financial Year of the Agency) Order, 1954. (S.I. 1954 No. 182.)

Legal Aid (General) (Amendment No. 1) Regulations, 1954. (S.I. 1954 No. 166.) 8d.

As to these regulations, see p. 133, *ante*.

Leyton (Repeal of Local Enactments) Order, 1953. (S.I. 1954 No. 171.)

Meat (Rationing) (Amendment) Order, 1954. (S.I. 1954 No. 170.)

National Insurance (Married Women) Amendment Regulations, 1954. (S.I. 1954 No. 163.) 6d.

Ships' Stores (Charges) (Amendment) Order, 1954. (S.I. 1954 No. 169.)

Stopping up of Highways (London) (No. 5) Order, 1954. (S.I. 1954 No. 185.)

Town and Country Planning (Grants) Amendment Regulations, 1954. (S.I. 1954 No. 177.)

As to these regulations, see p. 152, *ante*.

Town and Country Planning (Grants) (Scotland) Amendment Regulations, 1954. (S.I. 1954 No. 180 (S. 22).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–3 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. GEORGE BIRCH, solicitor, of Lichfield, was installed as Master of the Worshipful Company of Smiths at the annual Mayoral Court and Feast at Lichfield on 23rd February.

Mr. BRIAN DAVIDSON, before the war a solicitor of London, E.C.3, and at present a County Councillor for Gloucestershire, has been appointed a part-time member of the Monopolies and Restrictive Practices Commission.

The Queen has been pleased to appoint Mr. HAROLD JAMES HAMBLEN to be Deputy Chairman of the Court of Quarter Sessions for the County of London, with effect from 23rd February.

Mr. TEGID OWEN JONES, assistant solicitor in Newcastle Town Clerk's department, and formerly of Batley, has been appointed to a similar post with Chester Corporation.

Mr. HERBERT LLOYD, The Law Society's legal aid area secretary for South Wales, has been admitted a freeman of the Worshipful Company of Solicitors of the City of London, and admitted to the Freedom of the City of London.

The Queen has been pleased to appoint Mr. JOSEPH THOMAS MOLONY and Mr. PERCY MALCOLM WRIGHT, M.B.E., R.A.F.V.R., to be Recorders of the City of Exeter and the Borough of Devizes respectively, with effect from 24th February.

Alderman FREDERICK WILLIAM POZZI, solicitor, of Bangor, and a member of the Bangor Council since 1932, has accepted the invitation to become Mayor of the City of Bangor for the coming year.

Personal Notes

Mr. George Cecil Lowe, solicitor, of Burton-on-Trent, recently married Miss Susan Margaret Palmer, of Barton.

Mr. G. J. B. Thorne, solicitor, of Wolverhampton, and national president of the Round Table, was entertained at a banquet in his honour given on 20th February by his colleagues of the Wolverhampton Round Table. He was presented with a silver salver in recognition of his year of office.

Miscellaneous

DEVELOPMENT PLANS

COUNTY OF MONTGOMERY DEVELOPMENT PLAN

On 23rd December, 1953, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the County Offices, Welshpool, and certified copies or extracts of the plan so far as it relates to the undermentioned districts have also been deposited at the places mentioned below: Llanfyllin Borough—Rural District Council Offices, Llanfyllin; Llanidloes Borough—Town Clerk's Office, Llanidloes; Montgomery Borough—Town Clerk's Office, Montgomery; Welshpool Borough—County Offices, Welshpool; Machynlleth Urban District—The Plas, Machynlleth; Newtown and Llanllwchaiarn Urban District—Town Hall, Newtown; Forden Rural District—Town Clerk's Office, Montgomery; Llanfyllin Rural District—Rural District Council Offices, Llanfyllin; Machynlleth Rural District—The Plas, Machynlleth; Newtown and Llanidloes Rural District—Town Hall, Newtown. The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 10 a.m. and 12.30 p.m., and 2 p.m. and 4.30 p.m. on Mondays to Fridays inclusive. The plan became operative as from 27th February, 1954, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 27th February, 1954, make application to the High Court.

COUNTY OF DURHAM DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Durham. The plan, as approved, will be deposited in the Council Offices, Durham, for inspection by the public

" The place of finance in public administration " is the subject of a week-end conference to be held at Balliol College, Oxford, from Friday to Sunday, 19th to 21st March, under the auspices of the Institute of Municipal Treasurers and Accountants. The conference will be presided over by Sir Malcolm Trustram Eve, Bart, G.B.E., M.C., T.D., Q.C.

The Combined Annual General Meeting of members of the Area Committee and of members of all Local Committees within the No. 5 (South Wales) Legal Aid Area will be held at the Seabank Hotel, Porthcawl, on Saturday, 1st May, 1954, at 11.30 a.m.

Wills and Bequests

Mr. K. Ball, retired solicitor, of St. Leonards-on-Sea, left £32,000.

Mr. A. T. Chittock, M.B.E., solicitor, of Norwich, left £20,991 (£20,520 net).

Sir Gilbert McIlquham, solicitor, of Cheltenham, left £45,320 (£39,395 net).

Mr. C. H. Unsworth, retired solicitor, of Warrington, left £12,345.

OBITUARY

MR. J. COOPER

Mr. John Cooper, solicitor, of Henley-on-Thames, died on 24th February.

MR. J. R. H. COTTRILL

Mr. John Robert Hardstaff Cottrill, solicitor, of Manchester, died on 13th February, aged 65. Admitted in 1911, he had practised in Manchester for over forty years.

MR. J. S. GASKELL

Mr. James Scarisbrick Gaskell, solicitor, late of Kensington, died on 22nd February.

MR. A. F. LOVATT

Mr. Alfred Frederick Lovatt, retired solicitor, of Birmingham, died on 10th February, aged 78. He was a member of Birmingham City Council from 1911 to 1920. He was admitted in 1897.

MR. H. S. MARTIN

Mr. Henry Scott Martin, solicitor, of Newcastle-upon-Tyne, died recently, aged 79. He was admitted in 1896 and in 1927 was Under Sheriff of Newcastle. He formerly practised at Stanley.

MR. F. W. MILNE

Mr. Francis Warburton Milne, solicitor, of Macclesfield, died recently, aged 47. He was admitted in 1936.

MR. W. MOON

Mr. Walter Moon, solicitor, who was town clerk of Liverpool for many years, died on 11th February, aged 82. He was clerk and solicitor to the Metropolitan Water Board from 1904 to 1922, when he was appointed town clerk of Liverpool. He held this appointment until his retirement in 1936. From 1908 to 1935 he was honorary solicitor to the British Waterworks Association.

MR. O. L. P. MORGAN

Mr. Oswald Lewis Pughe Morgan, retired solicitor, of Muswell Hill, London, N.10, died on 6th February, aged 77. He was admitted in 1903.

MR. W. R. PERKINS

Mr. William Robert Perkins, solicitor, of Charing Cross Road, London, W.C.2, died on 2nd February. He practised regularly at Westminster County Court and other courts and extensively in the Metropolitan magistrates' courts. He was admitted in 1926.

MR. T. W. W. ROBERTS

Mr. Thomas William Wood Roberts, solicitor, of Croydon, died on 10th February, aged 84. He was Mayor of Croydon from 1921 to 1923 and was a former Deputy-Lieutenant of Surrey. He was admitted in 1891.

MR. H. ROYLE

Mr. Hugh Royle, solicitor, of North Walsham, died on 25th February, aged 70. He was formerly Town Clerk and Solicitor to Hammersmith Borough Council. He was admitted in 1912.

MR. R. K. SMITH

Mr. Richard Knightley Smith, solicitor, of Kirbymoorside, died on 14th January, aged 47. He was admitted in 1929.

MR. A. J. STURTON

Mr. Arthur Jacob Sturton, solicitor and assistant registrar at the Land Registry, died on 16th February.

MR. H. R. TERRY

Mr. Harry Richard Terry, managing clerk to a Seaford firm of solicitors for 50 years, died on 28th January, aged 81.

MR. W. TOWNEND

Mr. William Townend, retired solicitor, of Wakefield, died on 15th February, aged 93. He was on the Committee of the Royal Bath Hospital, Harrogate, and in 1900 was President of the Wakefield Law Society. He was admitted in 1883 and retired in 1930.

MR. E. A. WILLIAMS

Mr. Edward Arthur Williams, solicitor, of Sheffield, died recently, aged 50. He was admitted in 1925.

MR. A. M. WILSON

Mr. Arthur Munkhouse Wilson, solicitor, of Salisbury, and Registrar of Salisbury County Court and District Registry, died on 10th February, aged 71. He was clerk to the Amesbury Rural District Council and the Salisbury and Wilton Rural District Council for more than thirty years, and among his other public offices was that of coroner for the city of Salisbury. He resigned from these positions about twelve months ago. He was admitted in 1905.

MR. G. F. E. WILSON

Mr. Geoffrey Francis Edward Wilson, solicitor, of Lancaster, and county coroner, died on 16th February, aged 60. He was admitted in 1919.

SOCIETIES

The stewards conducting the UNITED LAW CLERKS' SOCIETY's anniversary festival have pleasure in announcing that the Right Hon. Lord Simonds, the Lord Chancellor, will preside at the 122nd Anniversary Festival Dinner, which is to be held at the Connaught Rooms, London, W.C.2, on Monday, 22nd March, 1954, at 6.30 p.m. Lord Simonds will be supported by some of Her Majesty's judges, by members of the Bar and solicitors. Application for tickets may be made to the Secretary of the Society at 2 Stone Buildings, Lincoln's Inn, London, W.C.2. Telephone CHAncery 6913.

The UNION SOCIETY OF LONDON announce the following subjects for debate in March: Wednesday, 10th, " That this House would prefer to keep Germany divided "; Wednesday, 17th, " That the present system of Civil Defence is inadequate." Meetings are held in the Common Room, Gray's Inn, at 8 p.m.

The annual dinner and dance of PLYMOUTH LAW STUDENTS' SOCIETY was held on Friday, 26th February. The toast " The Legal Profession " was proposed by the Lord Mayor of Plymouth, Alderman Sir Clifford Tozer, and Mr. G. R. King Anningson replied.

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Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).